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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 2596 of 2002

New Delhi, this the 29th day of May, 2003

HON'BLE MR. V.K. MAJOTRA, MEMBER (A)
HON'BLE MR. KULDIP SINGH, MEMBER (JUDL.)

Shri N.K. Sharma
S/o Late Pt. D.C. Sharma
Aged about 59 years
R/o 214 Saket, Railway Road,
Behind Sadar Patel Vidyalaya,
Pilkhuwa, District Ghaziabad (UP)
and working as SPM, Ramte Ram Road,
Ghaziabad (UP).

-APPLICANT

(By Advocate: Shri S.S. Tewari)

Versus

1. Union of India through
D.G. Posts,
Dak Tar Bhawan,
Sansad Marg,
New Delhi.
2. Director,
Postal Services (Bareilly Region)
Bareilly (UP).
3. Senior Superintendent of Post Offices,
Ghaziabad Region,
Ghaziabad (UP).
-RESPONDENTS

(By Advocate: Shri M.M. Sudan)

ORDER(CORAL)

By Hon'ble Mr. Kuldip Singh, Member (Judl.)

The applicant in this case impugns the order passed by the disciplinary authority dated 26.2.2001 and also the order passed by the appellate authority dated 24/29.5.2002 whereby the applicant had been imposed penalty of stoppage of increments for a period of 6 months after an enquiry was held under Rule 16 of the CCS (CCA) Rules, 1965.

2. Facts in brief are that the applicant joined the service with the respondents as Postman. Thereafter

[Signature]

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he was promoted in the Time Scale w.e.f. 6.9.71 and then he was promoted to LSG w.e.f. 6.9.87. On 17.11.1998 applicant was issued a memo whereby he was called upon to explain about an incident which had taken place between him and one Shri Mahesh Chandra. Applicant submitted a reply thereto, which was not found satisfactory so another memo dated 7.1.99 was issued proposing to take action against applicant under Rule 16 of the CCS (CCA) Rules, 1965. A copy of the statement of imputations was also annexed along with the memo dated 7.1.99 wherein it was alleged that the applicant had misbehaved with Shri Mahesh Chandra and had used abusive language and thus had misconducted himself and has behaved in a manner unbecoming of a Government servant.

3. A reply was also submitted denying all the charges. Then again on 8.2.99, another memorandum containing allegations of charges were issued along with the list of documents which were relied upon by the department. An Inquiry Officer was also appointed. The Inquiry Officer after completion of enquiry, submitted his report. However, in the enquiry the applicant was exonerated by the Inquiry Officer.

4. The disciplinary authority disagreed with the enquiry report vide its letter dated 1.9.2000. A copy of the enquiry report along with disagreement notice was given to the applicant wherein no reasons for disagreement was stated. The applicant submitted a representation against the disagreement note but the impugned order of punishment was passed.

5. The applicant has submitted that the impugned order cannot be sustained as the applicant was exonerated by the Inquiry Officer and the disagreement note is a non-speaking one and no detailed reasons have been given.

6. Besides that while recording the dissent note the disciplinary authority had arrived at a final conclusion and dissent note is not a tentative note. Though the applicant had been asked to give explanation or to make representation against the dissent note but the disciplinary authority had made up its mind, so there was no purpose to ask for the explanation.

7. The counsel for the applicant in support of his contention has also referred to a judgment of Hon'ble Delhi High Court in CWP No.2665/2002 and CWP No.4593/2001 entitled as Commissioner of Police Vs. Pramod Kumar and Others. The counsel for the applicant particularly relied upon paragraph 13 of the same which is reproduced hereinbelow:-

"13. However, while disagreeing with such findings, he must arrive at a decision in good faith. He, while disagreeing with the findings of the Inquiry Officer, was required to state his reasons for such disagreement but such a decision was required to be tentative one and not a final one. A disciplinary authority at that stage could not have predetermined the issue nor could arrive at a final findings. The records clearly suggest that he had arrived at final conclusion and not a tentative one. He proceeded in the matter with a closed mind. An authority which proceeds in the matter of this nature with a pre-determined mind, cannot be expected to act fairly and impartially".

8. After reading the same the counsel for the applicant submitted that the disciplinary authority is supposed to arrive at a decision in good faith and while



recording the dissent note the disciplinary authority has to give reasons but such decision is required to be tentative one and not a final one. After referring this the counsel for the applicant referred to the disagreement note and submitted that the disagreement note is only of 2 paragraphs wherein the disciplinary authority referring to the statement of PW Radhey Shaym had stated that the applicant had committed a misconduct by calling the complainant as Dhed which in the rustic language means Chamar. Thus the counsel for the applicant submitted that the disciplinary authority by using this paragraph had already arrived at a final decision and it is not a tentative decision so he submitted that on this ground alone the impugned order is liable to be quashed.

9. As against this the learned counsel for the respondents submitted that this page 33 clearly shows that it is a dissent note and it says that the undersigned is unable to agree with the report of the Inquiry officer on the following points:-

- (i) About the statement of Radhey Shyam; and
- (ii) The counsel for the respondents referred to the cover letter which was sent to the applicant along with this dissent note and stated that the disciplinary authority had quite consciously called upon the applicant to submit his representation if any within 15 days of the receipt of this letter.

A handwritten signature in black ink, appearing to read 'K' or 'Kw'.

10. Thus it was not a final decision. It was only a tentative decision and the two paragraphs which the applicant is dubbing as a decision but whereas the disciplinary authority has used the same only as a tentative reason to differ with the report of the Inquiry Officer.

11. In our view also though the judgment relied upon by the applicant fully applies to the present facts of the case but judgment simply says that the disciplinary authority has to apply its mind and give its tentative reasoning and documents at page 33 says that the disciplinary authority had disagreed with the report of the Inquiry Officer on certain points and had called for the explanation of the applicant about his disagreement. The reading of these two documents do not show at all if the disciplinary authority had arrived at a decision holding applicant guilty of the charge against the applicant. Thus it is in conformity with the judgment relied upon by the applicant.

12. Thus we find that no fault can be found with the manner in which the disagreement note has been recorded and the explanation about the same has been called for by the applicant. No other point has been urged to challenge the impugned orders and thus we are of the considered opinion that the contention raised by the applicant has no merits.

13. No interference is called for.

14. In view of the above, OA has no merits and the same is dismissed. No costs.

Kuldeep

(KULDIP SINGH)
MEMBER(JUDL)

V.K. Majotra

(V.K. MAJOTRA)
MEMBER (A)

Rakesh